

### **REMARKS**

The present amendment is submitted in response to the Office Action mailed March 11, 2005. Claims 1-23 are currently pending in the application. By this amendment, Claims 1, 7, 14, 22 and 23 have been amended. No new matter or issues are believed to be introduced by this amendment. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

### **35 U.S.C. §101**

In the Office Action, the Examiner alleges that the instant claims fail to recite the use of any type of technology (e.g., computer system) within the recited steps of the claimed method of recommending one or more available items. In response, independent Claims 1 and 7 have been appropriately amended to incorporate language which comports with the requirements of 35 USC 101. Applicants respectfully submit that independent claims 1 and 7 are no longer directed to non-statutory subject matter and are patentable for at least the following reasons.

Amended Claim 1 now recites –

1. A **computerized** method for recommending one or more available items, comprising the steps of: obtaining a history of selecting one or more available items by at least one third party; and **computerized generation of** a recommendation score for at least one of said available items based on said third party selection history.

Amended Claim 7 now recites –

7. A **computerized** method for maintaining a user profile indicating preferences of a user, comprising the steps of: partitioning a third party selection history into clusters containing similar items; receiving a selection from said user of at least one of said clusters of similar items; and **computerized updating of** said user profile using said selected clusters.

Claims 1 and 7 recite the use of a computerized method for performing distinct functions, and is, thus, statutory subject matter under 35 USC 101. Accordingly, Claims 1 and 7 are believed to satisfy the requirements for statutory subject matter under 35 USC 101.

Accordingly, it is respectfully requested that the rejection under 35 USC 101 of independent claims 1 and 7 be withdrawn, and independent claims 1 and 7 be allowed.

**35 U.S.C. §102(b)**

Claims 1-23 were rejected under 35 U.S.C. §102 (b) as being anticipated by U.S. Patent No. 5,758,257 (hereinafter Herz).

Regarding Claim 1, the Examiner alleges that Herz discloses a method for recommending one or more available items, comprising the steps of: obtaining a history of selecting one or more available items by at least one third party (Herz at Col. 5, lns. 24-54); and generating a recommendation score for at least one of said available items based on said third party selection history (Herz at Col. 5, lns. 5-20).

Independent Claim 1 has been amended to incorporate the limitations of Claim 2 and recite limitations and/or features which are not taught or disclosed by Herz.

Claim 1 as amended now recites:

1. A **computerized** method for recommending one or more available items **to a target user**, comprising the steps of:
  - obtaining a history of selecting one or more available items by at least one third party;
  - partitioning a third party selection history into a plurality of clusters, wherein each cluster contains items that are closer to the mean of the cluster than any other cluster from among the plurality of clusters,**
  - modifying a target user's history of selecting said one or more available items with the third parties' history to produce a modified target user's history;**
  - processing the modified target user's history to generate a target user profile, wherein the modified history characterizes preferences of the target user as modified to reflect the preferences of the third party;**
  - generating a recommendation score for at least one of said available items based on said **target user's profile; and**
  - displaying the recommendation score to the target user.**[Emphasis Added]

Herz is directed to a system and method for scheduling customer access to data from a plurality of data sources. The method may be used, for example, for scheduling customer access to video programs and other broadcast data. Objective customer profiles are obtained and compared with content profiles of the available video programming. Based on the comparison results, one or more customized programming channels are created for transmission, and from those channels, each customer's set top box may further determine "virtual channels" containing a collection of only those video programs

having content profiles which best match the customer's profile and hence are most desirable to the customer during the relevant time frame.

The recitation of "objective customer profiles" in Herz refers to the creation of a plurality of customer profiles for each customer, where each profile is representative of a customer's changing preference for predetermined characteristics in accordance with the time of the day and of the week.

In addition, the creation of the plurality of customer profiles may further comprise clustering customer profiles for combinations of customers expected to view the video programs at a particular location at particular times on particular days.

The multiplicity of customer profiles of Herz is in stark contrast to the single user profile of the invention. In Herz, a customer is assumed to have multiple customer profiles, one for each time slot for each day of the week. For example, if the day is broken up into 8 time slots, the customer would have 56 profiles (7 days x 8 time slots=56). Moreover, Herz teaches that any one of the 56 profiles, may be further modified by clustering the particular customer's profile with the profiles of other customers expected to view the video programs for the particular time slot and day. For example customer A's profile may be clustered with customer B's profile and with customer C's profile. This is taught in Herz at Col. 5, lines 24-53, "the profiles of Mom and Dad may be combined in the evening and the profiles of the children may be combined in the afternoon."

In sharp contrast to Herz, the present invention does not teach or disclose the construction or use of a plurality of customer profiles for each customer. Moreover, the present invention does not teach combining customer profiles.

The present invention constructs a single user profile from a modified viewing history constructed as an aggregation of user clusters and third party clusters, wherein one or more selected third party clusters serves to supplement or replace corresponding portions (clusters) of the user's viewing history to produce a modified viewing history. The modified viewing history is then processed to generate a target user's profile. The modified viewing history characterizes preferences of the target user as modified to reflect preferences of the third party.

Herz operates exclusively at the profile level, and does not teach or disclose the use of clusters. In sharp contrast, cluster construction is the foundation step for generating a modified target user's profile. In accordance with the method of the invention, the user's and third parties viewing history is combined into clusters based on some measure of similarity (e.g., drama, history, sports, etc.). For example, the specification recites at par. 21, "...the third party and user viewing histories 130, 140 may each contain a "drama" cluster, where most of the programs in the cluster are of the "drama" genre."

As stated above, Herz operates at the profile level and is silent with respect to clusters. Herz constructs user profiles, not from clusters, as recited in Claim 1, but instead from user provided data. In support, Herz discloses in the summary:

....The initial customer profiles are determined from customer questionnaires, customer demographics, relevance feedback techniques, default profiles, and the like, while the initial content profiles are determined from questionnaires completed by "experts" or some sort of customer's panel, are generated from the text of the video programs themselves, and/or are determined by adopting the average of the profiles of those customers who actually watch the video program. [Emphasis Added]

Accordingly, it is respectfully submitted that Herz does not teach the step of, *partitioning a third party selection history into a plurality of clusters, wherein each cluster contains items that are closer to the mean of the cluster than any other cluster from among the plurality of clusters,* as recited in Claim 1.

The third party clusters may then be selected to supplement or replace corresponding portions (clusters) of the user's viewing history to produce a modified viewing history. At best, Herz combines profiles of multiple users to create a conglomerate profile for a specific time, date and location for a customer.

Accordingly, it is respectfully submitted that Herz does not teach the further steps of: *modifying a target user's history of selecting said one or more available items with the third parties' history to produce a modified target user's history and processing the modified target user's history to generate a target user profile, wherein the modified history characterizes preferences of the target user as modified to reflect the preferences of the third party,* as recited in Claim 1.

Another method taught in Herz for constructing customer profiles is to assign a profile to a customer based on other customers in the customer's cluster of customers.

Herz discloses at Col. 5, lines 34-52:

In addition, the customer profile creating step preferably comprises the step of clustering customer profiles for combinations of customers expected to view the video programs at a particular customer location at particular times on particular days. For example, the clustered profiles for a customer's residence may contain the combined profiles of Mom and Dad in the evening and the combined profiles of the children in the afternoon. In this embodiment, the agreement matrix determining step comprises the step of using the different clustered customer profiles in accordance with the time of the day and of the week. Alternatively, the appropriate customer profiles for use in calculating the agreement matrix may be determined directly from identity information received from the customer or assigned to the customer in accordance to the cluster of customers to which that customer belongs. In the latter technique, it will be appreciated that customer profiles are not strictly necessary since each customer is assigned an initial customer profile determined from the clustered profiles of the other customers in his or her cluster of customers

It is respectfully submitted that the assignment of a customer profile is not based on cluster construction. As such, the assignment method taught in Herz is patentably distinct from the user profile construction method recited in Claim 1.

Based at least upon the above, it is respectfully submitted that at least the limitations and/or features of independent Claim 1 is believed to be patentably distinct over Herz. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of claim 1 is respectfully requested.

Claims 2-6 depend from independent Claim 1 and therefore contain the limitations of Claim 1 and are believed to be in condition for allowance for at least the same reasons

given for Claim 1 above. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of Claims 2-6 is respectfully requested.

Independent Claims 1, 14, 17, 21-23, as amended, recite similar subject matter as Claim 1 and therefore contain the limitations of Claim 1. Hence, for at least the same reasons given for Claim 1, Claims 1, 14, 17, 21-23 are believed to recite statutory subject matter under 35 U.S.C. §102(b).

### Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely, Claims 1 and 3-23 are believed to be in condition for allowance and patentably distinguishable over the art of record.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, the Examiner is requested to call Dicran Halajian, Esq., Intellectual Property Counsel, Philips Electronics North America, at 914-333-9607.

Respectfully submitted,



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